

ORDINANCE NO. 2571

AN URGENCY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, AMENDING URGENCY ORDINANCE NO. 2565, RELATING TO A TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

WHEREAS, on March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 ("COVID-19"); and

WHEREAS, on March 18, 2020, the Westminster Interim City Manager, acting as the Director of Emergency Services for the City of Westminster ("City"), declared a local emergency due to COVID-19. That decision was ratified by the City Council at its March 19, 2020 Council meeting; and

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20, which suspended any state law that would preempt or otherwise restrict the City's exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19; and

WHEREAS, On March 27, 2020, consistent with the Governor's order, the City Council adopted Urgency Ordinance 2565 (Exhibit A), which enacted a temporary moratorium on evictions for both residential and commercial tenants; and

WHEREAS, subsequently, on August 31, 2020, the state legislature enacted AB 3088, which established a statewide prohibition on residential evictions. The adoption of this statewide legislation preempted the City's ability to enact its own residential eviction protections. Commercial tenant protections continue to be governed by the terms of Westminster's Ordinance 2565, and are subject to the City's Council's discretion as to its duration and terms; and

WHEREAS, the City Council seeks to provide a reasonable balance between providing commercial tenants with the short-term protections afforded to them during the last year, and the rights of the commercial property owners many of whom have been unable to meet their own obligations as a result of the loss of rental income; and

WHEREAS, in balancing all of the competing interests and taking all current factors into account, including the presence of rental assistance programs for tenants, the City Council has determined that the Commercial evictions protections in Ordinance 2565 should be extended up through February 28, 2021, at which point they would end. By so doing, commercial tenants will have been provided with eviction protections for almost an entire year; and

WHEREAS, the City Council has the authority to adopt this ordinance under Government Code Section 8630, California Constitution Art XI, section 7, and pursuant to the Governor's Order N-28-20.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER DOES ORDAIN AS FOLLOWS:

SECTION 1. Paragraph A, of Section 1, of Ordinance 2565, is hereby deleted and the following is substituted in in place:

- A. Term. Section 1 shall remain in effect until 11:59 p.m. on February 28, 2021, at which point it shall terminate (the "Term"). Notwithstanding the termination, the provisions of Paragraph G dealing with Repayment of Rent shall continue in full force and effect for the period indicated in that paragraph.

SECTION 2. Paragraph G, of Section 1, of Ordinance 2565, is hereby deleted and the following is substituted in in place:

G. Repayment of Rent.

1. Nothing in this ordinance shall relieve the tenant of liability for any unpaid rent. After expiration of the Term, the landlord may seek repayment of any unpaid rent in accordance with state law. The repayment of rent is subject to the following terms: (a) landlord and tenant are encouraged to work out a mutually agreeable written agreement on the repayment of amounts due; (b) If the landlord and tenant are unable to reach an agreement, and the tenant is in full compliance with the requirements of Ordinance 2565 as amended, then the tenant will be allowed up to 12 months (until March 1, 2022) to make repayment of all amounts past due that were proven to be "COVID-19 Related Financial Impacts" as defined in this Ordinance 2565.
2. Unless a mutually agreeable written arrangement is reached between the landlord and tenant, in order for a commercial tenant to avail themselves of the repayment protections in this Ordinance, the tenant must comply with the following minimum payment obligations. Starting on March 1, 2021, and for each month thereafter until all past due amounts are paid in full, tenant must pay, at minimum, the current month's rent in full, plus at least one twelfth (1/12) of all amounts that were past due on March 1, 2021 due to COVID-19 Related Financial Impacts.
3. A landlord may not charge or collect penalties or late fees for rent that is delayed for the reasons stated in this Ordinance; nor may a landlord,

use the eviction process to collect past due amounts if such amounts are not required to be paid as set forth herein, unless the Tenant has not complied with all of tenant's obligations under this Ordinance.

SECTION 3. No Other Amendments. Except for the amendments, releases, authorizations and waivers specifically set forth above, Ordinance 2565 shall remain unchanged and in full force and effect.

SECTION 4. Emergency Declaration/Effective Date. The City Council declares this ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to California Government Code section 36934. The facts constituting the emergency are as follows: the directives from health officials to contain the spread of COVID-19 has resulted in loss of business, furloughs, loss of wages, and lack of work for employees. To protect the public health, safety, and welfare, the city must act to provide reasonable eviction protections for commercial tenants, to balance the interests and impacts between tenants and property owners. This urgency ordinance is necessary to provide a reasonable extension to the current protections for a temporary period during the pendency of the COVID-19 crisis.

SECTION 5. Future Governor's Order. If the Governor issues an executive order, or if state legislation is adopted, either of which supersedes the enforcement of Ordinance 2565 as amended by this ordinance, then that order or legislation shall control, and Ordinance 2565, as amended by this ordinance, shall no longer be in effect. Otherwise, this ordinance shall remain in full effect through its expiration date, and landlords and tenants must meet the requirements of both this Ordinance and the Executive Order or state legislation.

SECTION 6. Severability. If any portion of this ordinance is found to be unenforceable, each such provision shall be severed, and all remaining portions of this ordinance shall be enforced to the maximum extent legally permissible.

SECTION 7. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

PASSED, APPROVED AND ADOPTED this 24th day of February 2021 by the following vote:

AYES:	COUNCIL MEMBERS:	TA, NGUYEN, HO,
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE
ABSTAIN:	COUNCIL MEMBERS:	DO



TRI TA, MAYOR

ATTEST:



CHRISTINE CORDON, CITY CLERK

APPROVED AS TO FORM:



CHRISTIAN L. BETTENHAUSEN,
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, CHRISTINE CORDON, City Clerk of Westminster, do hereby certify that the foregoing ordinance was introduced and adopted at a regular meeting on the 24th day of February 2021, and was published/posted pursuant to law.



Christine Cordon
City Clerk

Exhibit A

ORDINANCE NO. 2565

AN URGENCY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER RELATING TO A TEMPORARY MORATORIUM ON EVICTING TENANTS, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

WHEREAS, on February 26, 2020, the Orange County Board of Supervisors and Department of Public Health declared a public health emergency in Orange County due to COVID-19. On March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 ("COVID-19"); and

WHEREAS, on March 18, 2020, the Westminster Interim City Manager, acting as the Director of Emergency Services for the City of Westminster ("City"), declared a local emergency due to COVID-19. That decision was subsequently ratified by the City Council at its March 19, 2020 City Council meeting. Due to directives from federal, state, and local health officials, residents have been advised to avoid public gatherings and stay at home to prevent the spread of this disease; and

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20. The order suspends any state law that would preempt or otherwise restrict the City's exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19; and

WHEREAS, the City of Westminster has been impacted by the health crisis of this global pandemic. Sporting events, concerts, plays, and conferences have been cancelled. School closures have occurred and may continue. Employees have been advised to work at home. As a result, restaurant and retail business has significantly declined and workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children. As the virus spreads, workers may have to stay home and businesses may have to restrict their activities or close for extended periods; and

WHEREAS, many tenants have experienced sudden income loss, and further income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants' ability to pay rent when due, leaving tenants vulnerable to eviction; and

WHEREAS, providing tenants with a short-term protection from eviction due to the inability to pay rent will help avoid increasing the homeless population and stabilize the rental housing and commercial real estate markets by reducing displacement; and

WHEREAS, during this state of emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement of tenants. Prohibiting residential and commercial evictions

on a temporary basis is necessary until the spread of the virus can be minimized and the emergency restrictions lifted; and

WHEREAS, nothing in this ordinance waives a tenant's obligations to pay back rent owed once this ordinance is no longer effective; and

WHEREAS, the City Council has the authority to adopt this ordinance under Government Code Section 8630, and also its authority under California Constitution Art XI, section 7, and pursuant to the Governor's Order N-28-20; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER DOES ORDAIN AS FOLLOWS:

SECTION 1. Moratorium on evictions due to nonpayment of rent during the COVID-19 emergency.

- A. **Term.** This Section 1 remains in effect until the expiration of the Governor's Executive Order N-28-20, including any extensions (the "Term").
- B. **Scope.** This ordinance applies to all residential and commercial tenants within the City. This moratorium shall not be applicable to any nonpayment of rent due prior to the Governor's March 4, 2020 declaration of an emergency.
- C. **Evictions.** No landlord shall seek to evict a residential or commercial tenant if both of the following are true:
 - (1) **Decreased Income, or Increased Medical Expenses.** The basis for the eviction is nonpayment of rent, or a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in operating hours or consumer demand), or substantial out-of-pocket medical expenses;
 - (2) **Cause is COVID-19.** The decrease in household or business income or the out-of-pocket medical expenses described in subsection (1), above, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and the income loss and the increased expenses are documented.

Subsection C(1) and C(2) are hereinafter collectively referred to as the "COVID-19-Related Financial Impacts."

D. Steps to Qualify. In order to qualify for the eviction protections in this ordinance, the tenant must do all of the following:

- (1) Notify the landlord in writing before the day the rent is due of the substantial COVID-19-Related Financial Impacts, and**
- (2) Within 30 days after the rent is due, provide reasonable documentation "in writing" establishing such substantial COVID-19-Related Financial Impacts.**
- (3) Timely Partial Payment.** On or before the day rent is due, the tenant must pay no less than the full amount of rent currently due, less the amount of COVID-19-Related Financial Impacts the tenant has reasonably proven.

[For Example: if a tenant's monthly rental payment is \$2,500, and the tenant is able to provide evidence demonstrating they have incurred \$1,000 in COVID-19-Related Financial Impacts, the tenant must still pay \$1,500 to the landlord on or before the due date in order to avail themselves of the protections in this ordinance. The remaining unpaid rent would then be paid in accordance with Paragraph G below.]

E. When Landlord Shall Not Evict. The landlord shall not serve a notice pursuant to CCP 1161(2), file or prosecute an unlawful detainer action based on a notice to pay rent or quit, or otherwise seek to evict for nonpayment of rent during the during the Term of this Ordinance if either:

- (1) rent is overdue for a period of 30 days or less, the tenant has notified the landlord as required in subsection D(1) above, and the tenant has made the required partial payment as required by subsection D(3); or**
- (2) rent is overdue for a period of 31 days or more and the tenant complied with all of the requirements in subsection D(1)-(3), above.**

F. Definitions:

- (1) Commercial Tenant** is defined to mean a business or commercial enterprise renting or leasing a structure used primarily for business purposes.
- (2) Residential Tenant** is defined as any person who is a tenant of a residential dwelling, including single family and multi-family homes, mobile homes or other structures lawfully used as a residential dwelling under this City's municipal code.

(3) "In Writing." The term "in writing" is defined to include any handwritten, typed, emailed or other text communication to a landlord, or to the landlord's authorized representative.

G. Repayment of Rent Required. Nothing in this ordinance shall relieve the tenant of liability for any unpaid rent. The landlord may seek the unpaid rent after the expiration of the Term, and the tenant must pay it as soon as possible, but in no event later than 120 days from the expiration of the Term. A landlord may not charge or collect penalties or a late fee for rent that is delayed for the reasons stated in this Ordinance; nor may a landlord, during the period the local emergency is in effect, seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

SECTION 2. Emergency Declaration/Effective Date. The city council declares this ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to California Government Code section 36934. The facts constituting the emergency are as follows: The directives from health officials to contain the spread of COVID-19 has resulted in loss of business, furloughs, loss of wages, and lack of work for employees. To protect the public health, safety, and welfare, the city must act to prevent eviction of tenants who are unable to pay rent due to wage losses caused by the effects of COVID-19. An emergency measure is necessary to protect tenants from eviction for a temporary period.

SECTION 3. Future Governor's Order. If the Governor issues an executive order which prohibits residential and commercial evictions throughout the state relating due to COVID-19 related impacts, then that order shall control, and this ordinance shall no longer be in effect. Otherwise, this ordinance shall remain in full effect, and landlords shall meet the requirements of both this Ordinance and the Governor's order.

SECTION 4. Severability. If any portion of this ordinance is found to be unenforceable, each such provision shall be severed, and all remaining portions of this ordinance shall be enforced to the maximum extent legally permissible.

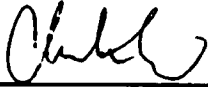
SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

PASSED, APPROVED AND ADOPTED this 27th day of March 2020 by the following vote:

AYES:	COUNCIL MEMBERS:	TA, HO, CONTRERAS, DO, NGUYEN
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE


TRI TA, MAYOR

ATTEST:



CHRISTINE CORDON, CITY CLERK

APPROVED AS TO FORM:


RICHARD D. JONES, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, CHRISTINE CORDON, City Clerk of Westminster, do hereby certify that the foregoing ordinance was introduced and adopted at a regular meeting on the 27th day of March 2020, and was published/posted pursuant to law.



Christine Cordon
City Clerk

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